



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 26, 1998

Mr. E. Cary Grace
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR98-0549

Dear Mr. Grace:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 112865.

The City of Houston (the "city") received a request for information about certain police officers and about the police department's radar units. The requestor submitted a document titled "Request for Production", with a cover letter stating that the request is made "under the Open Records Act" as well as the U.S. Constitution, the common law of Texas and "any statute providing for public access to government information." You assert that the information requested is protected from disclosure under section 552.103(a) of the Government Code.¹

We note initially that the Open Records Act does not serve as a vehicle to avoid discovery. *See* Attorney General Opinion JM-1048 (1989). This ruling does not address the applicability of the discovery rules to this request.² We will address your argument that section 552.103(a) protects the submitted information from required disclosure under the

¹Since you state that the city assumes the request is for personnel information from the officer's civil service files, we address your section 552.103(a) argument for information contained in the officers' civil service files. As you point out, information maintained in a Local Government Code Section 143.089(g) internal file is confidential by law and may not be disclosed. *See* Gov't Code § 552.101.

²In Open Records Decision No. 551 (1990) at 3, this office stated:

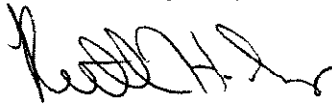
[Section 552.103] enables governmental entities to protect their position in litigation by forcing parties seeking information relating to that litigation to obtain it through discovery, if at all. [citations omitted.] We do not believe that the Open Records Act was intended to provide parties involved in litigation any earlier or greater access to information than was already available directly in such litigation.

Open Records Act. To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4.

You have provided information to this office showing that there is pending litigation, and our review of the documents shows that the records at issue are related to the litigation. Thus, you have shown the applicability of section 552.103(a) to the submitted documents, which may be withheld from disclosure. However, once information has been obtained by all parties to the litigation, no section 552.103(a) interest generally exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Also, the applicability of section 552.103(a) ends once the litigation concludes. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 112895

Enclosures: Submitted documents

cc: Mr. Antonio B. Cooper
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Houston, Texas 77082
(w/o enclosures)